

ORIGINAL

Supreme Court, U.S.  
FILED

JUN 1 1984

ALEXANDER L. STEVAS  
CLERK

No. 83-1817

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

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WILLIAM HARKINS, et al.  
Petitioners

-vs-

INTERSTATE MOTOR FREIGHT SYSTEM, et al.,  
Respondents.

---

RESPONDENT'S MOTION TO DEFER CONSIDERATION  
PURSUANT TO 11 U.S.C. SECTION 362

---

Robert J. Hollingsworth  
Attorney for Respondent  
Interstate Motor Freight System

Cors Bassett Kohlhepp  
Halloran & Moran  
1700 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202  
513/381-0312

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM HARKINS, et al.,	:	
Petitioners,	:	
-vs-	:	Case No. 83-1817
INTERSTATE MOTOR FREIGHT	:	RESPONDENT'S MOTION TO DEFER
SYSTEM, et al.,	:	CONSIDERATION PURSUANT TO
Respondents.	:	<u>11 U.S.C. SECTION 362</u>
	:	

Respondent Interstate Motor Freight System moves this honorable court for an order staying further consideration of Petitioners William Harkins, et al.'s petition for writ of certiorari. The grounds for this motion are contained in the memorandum set forth below.

MEMORANDUM IN SUPPORT

On April 11, 1984 Respondent Interstate Motor Freight System ("Interstate") filed a voluntary petition of bankruptcy in the United States Bankruptcy Court for the Western District of Michigan under Chapter 11 of the United States Bankruptcy Code. A copy of this petition is attached hereto as Exhibit A. Acting upon this petition and in accordance with 11 U.S.C. Section 362, the Bankruptcy Judge issued an automatic stay order prohibiting certain actions from commencing or proceeding against Interstate. A certified copy of said automatic stay order is attached hereto as Exhibit B.

Section 362(a)(1) of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay of:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

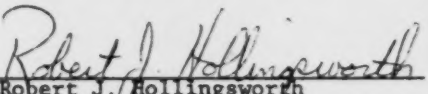
The complaint in this action was filed on May 1, 1975, about nine years before Interstate's bankruptcy proceeding was

commenced. Accordingly, since this action is a claim arising prior to Interstate's bankruptcy proceeding, it is thus subject to the Section 362 automatic stay order issued by the United States Bankruptcy Court for the Western District of Michigan and further proceedings in it should be stayed.

CONCLUSION

For the foregoing reasons, Respondent Interstate Motor Freight System submits that its motion to defer consideration pursuant to 11 U.S.C. Section 362 is well taken and should be granted.

Respectfully submitted,

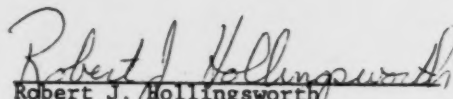
  
Robert J. Hollingsworth  
Attorney for Respondent  
Interstate Motor Freight System

Cors Bassett Kohlhepp  
Halloran & Moran  
1700 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202

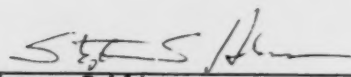
AFFIDAVIT OF SERVICE

STATE OF OHIO       )  
                          ) SS:  
COUNTY OF HAMILTON)

I, Robert J. Hollingsworth, after being first duly sworn according to law, do hereby certify that three copies of the foregoing Motion have been deposited in a United States mailbox with first class postage prepaid on this 30 day of May, 1984 and sent to Paul H. Tobias, 911 Clopay Building, 105 East Fourth Street, Cincinnati, Ohio 45202, and Mark A. Greenberger, Suite 1400, 105 East Fourth Street, Cincinnati, Ohio 45202.

  
Robert J. Hollingsworth  
Attorney for Respondent

Sworn to before me and subscribed in my presence this  
30 day of May, 1984.

  
Notary Public  
STEPHEN S. HOLMES, Attorney at Law  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration  
Date, Section 147.03 O.R.C.

UNITED STATES BANKRUPTCY COURT FOR THE  
In re

DISTRICT OF

Case No.

CHAPTER 11

VOLUNTARY CASE:  
DEBTOR'S PETITION

HC 84-00880

Interstate Motor Freight System  
Employer's Identification number 38-0679046  
Include here all names used by debtor within last 6 years.

1. Petitioner's post-office address is  
110 Ionia Ave., N.W.  
Grand Rapids, MI 49503
2. Petitioner has ☐ resided within this district for the preceding 180 days.  
☐ had domicile within this district for the preceding 180 days.  
☒ had its principal place of business within this district for the preceding 180 days.  
☐ resided or been domiciled or had principal place of business within this district for a longer portion of the preceding 180 days than in any other district.
3. Petitioner is qualified to file this petition and is entitled to the benefits of title 11, United States Code as a voluntary debtor.
4. ☐ A copy of petitioner's proposed plan dated 19 is attached.  
☒ Petitioner intends to file a plan pursuant to chapter 11 of title 11, United States Code.
5. Exhibit A is attached to and made a part of this Petition.\*

Wherefore, petitioner prays for relief in accordance with chapter 11 of title 11, United States Code.  
Signed: VARNUM, RIDDERING, SCHMIDT & HOWLETT  
By: Timothy P. Gurein  
Address: 171 Monroe N.W., Suite 800  
Grand Rapids, MI 49503

Petitioner(s) sign if not represented by attorney

Petitioner

Petitioner

### DECLARATION

INDIVIDUAL: I, the petitioner named in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct.

JOINT INDIVIDUALS: We, and the petitioners named in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct.

CORPORATION: I, Michael P. Zell, the Vice-President-General Counsel & Secretary of the corporation named as petitioner in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct, and that the filing of this petition on behalf of the corporation has been authorized.

PARTNERSHIP: I, a member -- an authorized agent -- of the partnership named as petitioner in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct, and that the filing of this petition on behalf of the partnership has been authorized.

Executed on April 9, 1984

Signature:

By: Michael P. Zell  
Its Vice-President-General Counsel and Secretary

Form No. 1 & 2 combined & 3, chapter 11, Voluntary case: debtor's petition (individual, joint, corporation and partnership, 10-70).

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SECRETARY'S CERTIFICATE

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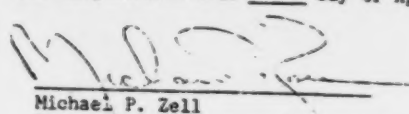
I, Michael P. Zell, Vice President - General Counsel and Secretary of Interstate Motor Freight System, do hereby certify that the resolutions adopted by the Executive Committee of the Board of Directors of the Company shown below are in full force and effect upon the date of execution of this document.

Protection Under Chapter 11 of the Bankruptcy Code

WHEREAS, This Corporation may be in need of the protection afforded by Chapter 11 of the Bankruptcy Code; NOW, THEREFORE, be it:

RESOLVED, That the Chairman of the Board, President, or any Vice President, of Interstate Motor Freight System be and they are hereby authorized, empowered and directed on behalf of the Corporation or any of its wholly-owned subsidiaries to prepare and file for the Corporation and its various wholly-owned subsidiaries, if necessary, a Petition for Relief under Chapter 11 of the Bankruptcy Code and all other necessary papers in connection therewith in the Bankruptcy Court for the Western District of Michigan as provided by said Bankruptcy Code, and further, to perform all other acts and take all and any other steps in the name and on behalf of the Corporation or any of its wholly-owned subsidiaries, necessary and appropriate in connection with said Chapter 11 case; and the Chairman of the Board, President, and/or any Vice President, be and they are hereby authorized on behalf of this Corporation or any of its wholly-owned subsidiaries, to employ the law firm of Varnum, Riddering, Schmidt and Howlett of 800 Mutual Home Building, 171 Monroe Avenue, N. W., Grand Rapids, Michigan to act as attorneys for the Corporation or any of its wholly-owned subsidiaries in connection with all matters relating to the carrying out of the intent and purpose of this resolution.

Witness my hand and seal of the Corporation this 7 day of April, 1964.

  
Michael P. Zell  
Vice President - General Counsel  
and Secretary

Interstate Motor Freight System  
110 Ionia Ave. NW Suite 7000  
Grand Rapids, MI 49503

Exhibit "A"

FOR COURT USE ONLY

DATE PETITION FILED APR 11 4 25 PM '84  
CASE NUMBER \_\_\_\_\_  
BANKRUPTCY JUDGE \_\_\_\_\_

1. Petitioner's employer's identification number is 38-0679040
  2. If any of the petitioner's securities are registered under section 12 of the Securities and Exchange Act of 1934, SEC file number is 09-389
  3. The following financial data is the latest available information and refers to petitioner's condition on March 25, 1984
- a. Total assets: \$ 59,035,603.00
  - b. Liabilities:

		APPROXIMATE NUMBER OF HOLDERS
Secured debt, excluding that listed below	\$ 50,886,741.00	10
Debt securities held by more than 100 holders:	\$ N/A	N/A
Secured .....	\$	
Unsecured .....	\$	
Other liabilities, excluding contingent or unliquidated claims .....	\$ 1,059,828	137
Number of shares of common stock	4,035,000	14,180
Comments, if any:		

4. Brief description of petitioner's business: Holding Company of Motor Freight Transportation Corporations

5. The name of any person who directly or indirectly owns, controls, or holds, with power to vote, 25% or more of the voting securities of petitioner is None

6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner are IMFS, Inc., INTERSTATE

SYSTEM STEEL DIVISION, INC., SOUTHWEST FREIGHT LINES, INC., TRANSPORTATION &

BUSINESS SYSTEMS, INC., COAST TO COAST TRANSPORTATION, INC. CROSS COUNTRY CARRIERS,

INC., SOUTHWEST CONTINENTAL FREIGHT LINES, INC.

INTERSTATE MOTOR FREIGHT SYSTEM  
38-0679040  
TWENTY LARGEST UNSECURED CREDITORS

April 11, 1984

Alex Brown & Sons 135 E. Baltimore St. Baltimore, MD 21202	150,000.00
Ernst & Whinney Suite 1000 171 Monroe, N.W. Grand Rapids, Michigan 49503	132,670.00
Varnum, Riddering, Schmidt & Howlett Suite 800 171 Monroe, N.W. Grand Rapids, Michigan 49503	111,991.54
Old Republic Insurance Co. P.O. Box 789 Greensburg, PA 15601	85,000.00
Hebb & Gitlin One State St. Hartford, CT 06103	80,789.36
Pilot Insurance Agency P.O. Box 203 Winston-Salem, NC 27102	56,250.00
Ohio Bureau Workers Compensation 246 N. High St. Columbus, Ohio 43215	33,598.12
Prudential Insurance Co. Group Administration Dir. P.O. Box 9436 Minneapolis, MN 55440	32,602.48
Morgan, Lewis & Bockius One Logan Square Philadelphia, PA 19103	23,579.15
Morris, Rose & Ledgett Suite 6000 145 King St., West Toronto, Ontario, Canada M5H3K4	20,000.00
Workers Compensation Board P.O. Box 401 Albany, NY 12201	16,749.00

- Continued -

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INTERSTATE MOTOR FREIGHT SYSTEM  
TWENTY LARGEST UNSECURED CREDITORS. (CONTINUED)  
PAGE 2 OF 2

Cupac, Inc. P.O. Box 4783 Boston, MA 02212	14,912.00
Connecticut Bank & Trust Corporation Trust Dept. One Constitution Plaza Hartford, CT 06115	12,000.00
Kasen, Kraemer, Burns & Lovell, PA 1180 Raymond Blvd. Newark, NJ 07102	10,066.02
Young & Perl, P.C. Suite 2380 One Commerce Square Memphis, TN 38103	8,695.41
Alexander & Alexander of Michigan, Inc. 600 Fisher Bldg. Detroit, Michigan 48202	6,250.00
Mortimer A. Sullivan Jr. 43 Court Ct. Buffalo, NY 14202	4,781.53
Crawford & Co. P.O. Box 5047 Atlanta, GA 30302	4,628.00
Makovsky & Co. 370 Lexington Ave. New York, NY 10017	3,856.52
Eastman & Smith 800 United Savings Bldg. Toledo, Ohio 43604	3,500.12

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District of \_\_\_\_\_

Case No.

## CHAPTER 11

VOLUNTARY CASE:  
DEBTOR'S PETITION

86 84-00881

IMFS, INC  
Employer's Identification number 38-2365097  
Include here all names used by debtor within last 6 years.

1. Petitioner's post-office address is

110 Ionia Ave., N.W.  
Grand Rapids, MI 49503

2. Petitioner has ☐ resided within this district for the preceding 180 days.  
☐ had domicile within this district for the preceding 180 days.  
☒ had its principal place of business within this district for the preceding 180 days.  
☐ resided or been domiciled or had principal place of business within this district for a longer portion of the preceding 180 days than in any other district.

3. Petitioner is qualified to file this petition and is entitled to the benefits of title 11, United States Code as a voluntary debtor.

4. ☐ A copy of petitioner's proposed plan dated \_\_\_\_\_  
☒ Petitioner intends to file a proposed plan dated \_\_\_\_\_

☒ Petitioner intends to file a plan pursuant to chapter 11 of title 11, United States Code. 19

5. *Exhibit A is attached to and made a part of this Petition.\**

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Wherefore, petitioner prays for relief in accordance with chapter 11 of title 11, United States Code.

Signed: [Signature]  
By: T. J. Kelly Attorney for Defendant  
Address: 171 Monroe N.W., Suite 800  
Grand Rapids, MI 49503

Petitioner(s) sign: if not represented by attorney

### Petitioner

## Petitioner

## DECLARATION

INDIVIDUAL: L  
ally of perjury that the foregoing is true and correct.

the petitioner named in the foregoing petition, certify under pen-

JOINT INDIVIDUALS: We.

petitioners named in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct.

CORPORATION: I, Harvey N. Gainey the President of the corporation named as  
petitioner in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct, and that the filing  
of this petition on behalf of the corporation has been authorized.

**PARTNERSHIP: 1.**

as petitioner in the foregoing petition, certify under penalty of perjury that the foregoing is true and correct, and that the filing of this petition on behalf of the partnership has been authorized.

Executed on April 9, 1984

Signature: Harvey N. Guiney  
By: Harvey N. Guiney  
Its President  
Petitioner

### Petitioners

## BEST AVAILABLE

SECRETARY'S CERTIFICATE


I, Stanley E. Aumugher, Vice President - Controller of IMFS, Inc., do hereby certify that the resolutions adopted by the Executive Committee of the Board of Directors of the Company shown below are in full force and effect upon the date of execution of this document.

Protection Under Chapter 11 of the Bankruptcy Code

WHEREAS, This Corporation may be in need of the protection afforded by Chapter 11 of the Bankruptcy Code; NOW, THEREFORE, be it:

RESOLVED, That the President, or any Vice President, of IMFS, Inc. d/b/a Interstate System, be and they are hereby authorized, empowered and directed on behalf of the Corporation to prepare and file for the Corporation, if necessary, a Petition for Relief under Chapter 11 of the Bankruptcy Code and all other necessary papers in connection therewith in the Bankruptcy Court for the Western District of Michigan as provided by said Bankruptcy Code, and further, to perform all other acts and take all and any other steps in the name and on behalf of the Corporation, necessary and appropriate in connection with said Chapter 11 case; and the President, and/or any Vice President, be and they are hereby authorized on behalf of this Corporation to employ the law firm of Varnum, Riddering, Schmidt and Howlett of 800 Mutual Home Building, 171 Monroe Avenue, N. W., Grand Rapids, Michigan to act as attorneys for the Corporation in connection with all matters relating to the carrying out of the intent and purpose of this resolution.

Witness my hand and seal of the Corporation this 9<sup>th</sup> day of April, 1984

  
Stanley E. Aumugher  
Vice President - Controller

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WESTERN DIST. OF MICH.

Exhibit "A"

IMFS Inc.  
110 Ionia Ave. NW  
Grand Rapids, MI 49503

FOR COURT USE ONLY

DATE PETITION FILED

CASE NUMBER

BANKRUPTCY JUDGE

1. Petitioner's employer's identification number is 38-2365097
2. If any of the petitioner's securities are registered under section 12 of the Securities and Exchange Act of 1934, SEC file number is N/A
3. The following financial data is the latest available information and refers to petitioner's condition on March 25, 1984
  - a. Total assets: \$ 21,081,155
  - b. Liabilities:

		APPROXIMATE NUMBER OF HOLDERS
Secured debt, excluding that listed below	\$ <u>N/A</u>	<u>N/A</u>
Debt securities held by more than 100 holders:	\$ <u>N/A</u>	<u>N/A</u>
Secured .....	\$ _____	_____
Unsecured .....	\$ _____	_____
Other liabilities, excluding contingent or unliquidated claims .....	\$ <u>21,753,138</u>	<u>10,000</u>
Number of shares of common stock _____	<u>50,000</u>	<u>1</u>
Comments, if any: _____		

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U.S. DISTRICT COURT  
N.D. MI

4. Brief description of petitioner's business: Motor Freight Carrier

5. The name of any person who directly or indirectly owns, controls, or holds, with power to vote, 25% or more of the voting securities of petitioner is Interstate Motor Freight System

6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner are None

IMFS, INC.  
38-2365097  
LARGEST UNSECURED CREDITORS

April 6, 1984

Armco Insurance Group, Inc. P.O. Box 85435 Dallas, TX 75285	1,000,000
Goodyear Tire & Rubber Co. P.O. Box 84001 Dallas, TX 75284	668,285
Immanuel Transport, Inc. 13920 Mica St. Santa Fe Springs, CA 90670	538,348
Ashland Petroleum Co. Dept. L - 238 Columbus, OH 43260	376,329
Cental Pennsylvania Teamsters Pension Fund Reading, PA 19603	190,612
Cental States Pension Fund Chicago, Illinois 60631	596,792
Central States H & W Fund Chicago, Illinois 60631	309,876
Rozay's Transfer 2315 Nadqau St. Huntington Park, CA 90255	183,947
Duthler Leasing, Inc. 461 28th St., S.E. Grand Rapids, Michigan 49507	164,535
Gator Freightways Inc. 2175 Commonwealth Jacksonville, FLA 32209	146,016
Ohio Highway Drivers Insurance fund Dayton, OH 45402	126,558
Teamsters Local 429 Welfare Fund Reading, PA 19603	137,359
Greyhound Computer Corp. P.O. Box 96775 Chicago, Illinois 60693	133,636

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WESTERN DIST. OF MICH.

ITS, INC.  
LARGEST UNSECURED CREDITORS (CONTINUED)  
PAGE 2 OF 3

McDowell Oil Service, Inc. P.O. Box 29 Bloomsburg, PA 17815	116,134
Bruce Johnson Trucking P.O. Box 5647 Charlotte, NC 28225	111,328
Silver Eagle Co. 12855 48th Ave., So. Seattle, Washington 98168	104,055
Brondes Mtr Sales Inc. 5717 Secor Road Toledo, Ohio 43623	95,223
Trucking Employees of North Jersey Welfare Fund Inc. 707 Summit Ave. Union City, NJ 07087	90,126
Lakeshore Business forms P.O. Box 924 Sandusky, Ohio 44870	87,220
D.E. X Press P.O. Box 423 La Canada, CA 91011	77,218
Michigan Conference of Teamsters Welfare Fund Box 1033A Detroit, Michigan 48232	66,331
Western PA Teamsters Welfare Fund 50 Penn Circle W. Pittsburgh, PA 15206	72,460
International Business Machines P.O. Box 6966 Cleveland, Ohio 44101	70,653
Nu Trend Tire & Service Co. 1510 N. Grand River Ave. Lansing, Michigan 48906	64,663
Michigan Bell Telephone Company P.O. Box 5030 Saginaw, Michigan 48663	59,531

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WESTERN DISTRICT OF MICH.

ITS, INC.

LARGEST UNSECURED CREDITORS (CONTINUED)

PAGE 3 OF 3

Duthler Ford Truck Inc. 4525 Clay S.W. Grand Rapids, Michigan 49509	53,421
General Electric Credit Corp. P.O. Box 309 Northbrook, Illinois 60062	53,402
Bi State Ford Truck Sales P.O. Box 5036 1125 E. Alexis Road Toledo, Ohio 43611	53,360
M.D.F.C. Equipment Leasing Corp. P.O. Box 96573 Chicago, Illinois 60693	52,251
Cummings CTL Ohio, Inc. 4000 Lyman Dr. Box 10 Hilliard, Ohio 43026	45,514

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WESTERN DISTRICT OF MICH

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MICHIGAN

At a Court of Bankruptcy held in and for said District, at Grand Rapids, Michigan, this \_\_\_\_\_ day of APR 12 1984

PRESENT:

\_\_\_\_\_, Bankruptcy Judge

IN RE

IMFS, INC.,

Debtor.

CASE NO. HG 84-00881

NOTICE OF STAY OF PROCEEDINGS

TO: ALL CREDITORS OF THE ABOVE-CAPTIONED DEBTOR(S); THEIR ATTORNEYS,  
SERVANTS, AGENTS.  
ALL SHERIFFS, MARSHALLS AND COURT OFFICERS.  
ALL OTHER PERSONS WITH NOTICE OF THIS ORDER.

Pursuant to the provisions of Section 362 of the Bankruptcy Code (11 USC 362) you are hereby enjoined and stayed from commencing or continuing any action at law or suits or proceedings in equity against said debtor in any court, or from executing or issuing or causing the execution or issuance out of any court of any writ, process, summons, attachment, subpoena, replevin execution or other process for the purpose of impounding or taking possession of or interfering with or enforcing a lien upon any property owned by or in the possession of the said debtor, and from doing any act or thing whatsoever to interfere with the possession or management of said debtor of the property and assets of the within estate, or in any way interfere with said debtor in the discharge of its duties herein, or to interfere in any manner during the pendency of this proceedings with the exclusive jurisdiction of this court over said debtor and its properties; and all persons, firms or corporations owning any lands or buildings occupied by said debtor or wherein is contained any property of the within estate be, and you are hereby jointly and severally stayed, pending the further order of this court, from removing or interfering with any such property.

This stay does not in any way modify the provisions of 11 USC 362. You should consult this statute to determine applicable exceptions.

APR 12 1984

Date

ATTEST: A TRUE COPY  
RICHARD D. JACKSON  
CLERK OF COURT

\_\_\_\_\_  
Bankruptcy Court Judge

CERTIFIED AS A TRUE  
RICHARD D. JACKSON, CLERK

BY Richard D. Jackson  
Deputy Clerk

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